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November 13, 2017

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

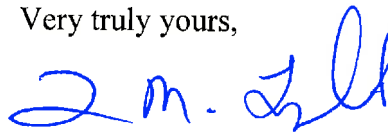
**Re: Michael W. Chattin v. Pennsylvania Electric Company**  
**Docket No. C-2017-2630649**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of Pennsylvania Electric Company in the above-referenced matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Lauren M. Lepkoski

krak  
Enclosures

c: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL W. CHATTIN** :  
 :  
 **v.** : **Docket No. C-2017-2630649**  
 :  
 **PENNSYLVANIA ELECTRIC COMPANY** :

**NOTICE TO PLEAD**

TO: Michael W. Chattin

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objections of Pennsylvania Electric Company within ten (10) days from service of this notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objections may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.

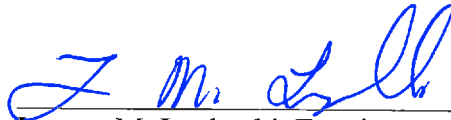
File with:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski  
Tori L. Giesler  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

Date: November 13, 2017

  
\_\_\_\_\_  
Lauren M. Lepkoski, Esquire  
Tori L. Giesler, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL W. CHATTIN** :  
 :  
 **v.** : **Docket No. C-2017-2630649**  
 :  
**PENNSYLVANIA ELECTRIC COMPANY** :

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF  
MICHAEL W. CHATTIN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company ("Penelec" or the "Company"), by and through its counsel, Lauren M. Lepkoski and Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

**I. Introduction**

1. In his recently filed Formal Complaint, Michael W. Chattin ("Complainant"), who resides at 58 Rocky Top Lane, Rome, Pennsylvania 18837 ("Service Location") alleges that he does not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.) The Complainant states as requested relief, "I want to PUC to uphold the law and allow me to receive my electric with my current analog meter." (Formal Complaint ¶ 5.)

2. The Company is in the process of deploying smart meters in its service territory in accordance with Act 129 of 2008 ("Act 129").<sup>1</sup>

3. On February 21, 2017, the Company sent correspondence to the Complainant regarding the installation of a smart meter at the Service Location. On March 15, 2017, the

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<sup>1</sup> 66 Pa.C.S. § 2806.1 *et seq.* Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. § 2807(f)(1) and (2).

Company received notification from Wellington Energy, a contractor for the Company, that the Complainant was refusing installation of the smart meter because his wife has cancer. On May 12, 2017, a pre-disconnection warning letter was sent to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved Tariff.<sup>2</sup> On May 15, 2017, the Complainant contacted the Company to again refuse the smart meter installation. On May 22, 2017, a service termination notice was issued. On June 1, 2017, the Complainant contacted the Company to again refuse the smart meter installation. On June 2, 2017, a second service termination notice was issued. On June 7, 2017, the Complainant contacted the Company continuing to refuse the smart meter installation and stating that the smart meters were not mandated by law. On June 8, 2017, the Complainant again contacted the Company regarding his wife's health conditions. On June 12, 2017, the Complainant contacted the Company seeking a copy of the "law" mandating the smart meter installation. A three day "hold" was placed on the Complainant's Account and reference materials were mailed to the Complainant. On June 26, 2017, the Company lawfully terminated service to the Service Location. On June 27, 2017, the Company attempted to contact the Complainant and left a message. On June 28, 2017, the Complainant contacted the Company regarding the termination of service and the Complainant was advised that service would be restored if the smart meter was permitted to be installed. On June 30, 2017, the Company was contacted regarding the Complainant's termination by the Office of Consumer Advocate ("OCA") and, as a courtesy, the Company temporarily restored service to the Complainant. On September 28, 2017, a pre-disconnection warning letter was sent to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the

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<sup>2</sup> *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 3, 2015.

Company's Commission-approved Tariff.<sup>3</sup> No response was received. On October 10, 2017, a service termination notice was issued. On October 16, 2017, the Complainant contacted the Company regarding the service termination notice. The Complainant was advised that in September 2017, the Company reached the end of its deployment schedule in the Complainant's area and needed to install smart meters on all customer homes and businesses in the Complainant's area in accordance with the deployment plan that was approved by the Commission and medical certificates were not being accepted to delay termination. On October 20, 2017, a second service termination notice was issued. On October 24, 2017, the Company was electronically served with the instant Formal Complaint and termination efforts ceased.

4. As explained in greater detail below, even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, such that relief can be granted. *See* 66 Pa.C.S. § 701.

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainant's request for an exemption from the installation of a smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

## **II. Background**

6. Penelec is an electric distribution company that is certificated as a public utility in Pennsylvania.

7. On February 21, 2017, the Company sent correspondence to the Complainant regarding the installation of a smart meter at the Service Location. On March 15, 2017, the

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<sup>3</sup> *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 3, 2015.

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<sup>4</sup> *Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 81, pp. 45, 60, issued May 1, 2015, effective May 3, 2015.

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8. On or about October 19, 2017, the Complainant filed a Formal Complaint with the Commission against Penelec at the above-captioned docket. The Company was electronically served with the Formal Complaint on October 24, 2017.

9. Penelec is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection, which Answer and New Matter is incorporated into this Preliminary Objection as if fully set forth herein.

### **III. Argument**

10. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

11 The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

12. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

13. In accordance with Section 701 of the Code, 66 Pa.C.S. § 701, a person may file a complaint which sets forth "any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." As explained below, the Company has not violated the Public Utility Code or the orders or regulations of the Commission.<sup>6</sup> In fact, the Company's action have been in compliance with Act 129 and the June 5 Order.

14. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the

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<sup>6</sup> 66 Pa.C.S. § 701.

Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

15. Penelec's smart meter deployment plan was approved by the Commission at Docket No. M-2013-2341990 by Order entered June 5, 2014. In accordance with the June 5 Order, the Company filed its final Smart Meter Deployment Plan ("SMP") on June 16, 2014. The SMP was approved by the Commission on June 20, 2014. The Complainant challenges no aspect of the Company's provision of electric service other than the installation of a smart meter at the Service Location, as required by Act 129 and the Company's SMP.

16. Commission precedent is uniform that it cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to opt out.<sup>7</sup>

17. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of ruling on a preliminary objection, the Complainant has failed to allege that Penelec has committed or omitted an act in violation of a Commission statute, regulation, order, or Penelec's tariff, a finding of which must be made in order to sustain a formal complaint. *See* 66 Pa.C.S. § 701; *County of Allegheny*, *supra*. (Compl. ¶ 4).

18. Because Act 129 and the Commission's orders not only authorize but require the Company to develop and implement a smart meter procurement and installation plan, and do not

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<sup>7</sup> *Negley v. Pennsylvania Electric Company*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action closed March 3, 2011); *Lutherschmidt v. Pennsylvania Electric Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011). The Commission has continued to uphold installation of smart meters and imposition of smart meter charges on customers' bills by dismissing complaints opposing installation of smart meters and imposition of smart meter charges on the basis of legal insufficiency. *Corbett v. Pennsylvania Electric Company*, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); *Jones v. Pennsylvania Electric Company*, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); *Griffin v. Pennsylvania Electric Company*, Docket No. C-2012-2300172 (Final Order entered November 13, 2012); *Brake v. West Penelec Company*, Docket No. C-2013-2367308 (Final Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); *Efaw v. West Penelec Company*, Docket No. C-2014-2413744 (Final Order entered June 12, 2014). *See also*, the Initial Decision of ALJ Susan D. Colwell in *Dennis McElwain v. Pennsylvania Electric Company*, Docket No. C-2014-2451478 issued December 3, 2015.

allow a customer to opt out of having a smart meter installed, this Complaint must be dismissed. As a matter of law, the Company is required to install a smart meter at the Service Location. As such, the Commission cannot find the Company to be in violation for having attempted to follow the law as it has done here.

19. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. *See* 52 Pa. Code § 5.101(a)(4).

21. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21 (d).

22. Recently, the Commission set for hearing two cases in which the complainant was opposed to the installation of a smart meter at their premises.<sup>8</sup> These cases represent a departure from past Commission practice of dismissing such complaints on Preliminary Objections. The Commission stated that where a complainant has presented specific factual averments regarding the health or other effects that they have experienced after a smart meter was installed at their home, the Commission has overruled Preliminary Objections and allowed a case to proceed. Specifically, in *Kreider*, the complainant alleged specific deleterious health effects after installation of a smart meter affecting her specific medical condition. Further, in *Van Schoyck*, the complainants alleged potential health risks due to constant ringing noise in their home and their inability to sleep since the time the smart meter was installed.<sup>9</sup> In contrast, in the instant case, the Complainant have made no specific factual averments regarding health or other effects experienced which began *after* a smart meter was installed. In fact, the Complainant only alleges, speculatively, that the smart meters are unsafe and could affect his wife's health, and as relief he

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<sup>8</sup> *Susan Kreider v. PECO Energy Company*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016); *Stephen and Diane Van Schoyck v. PECO Energy Company*, Docket No. C-2015-2478239 (Opinion and Order entered February 25, 2016).

<sup>9</sup> *Id.*

wants the Commission to bar the Company from installing a smart meter. The Commission has not recognized a general assertion of general, potential health concerns as sufficient to overcome Preliminary Objections.<sup>10</sup> Therefore, the Company respectfully submits that the matters plead in the subject Formal Complaint do not meet the standards set in the *Kreider* and *Van Schoyck* cases such that this matter can survive dismissal on preliminary objections.

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainant's request for an exemption from the installation of a smart meter; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



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Dated: November 13, 2017

Counsel for Pennsylvania Electric Company

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<sup>10</sup> *Richard and Marie Fugo in care of Fugo Eye Institute v. PECO Energy Company*, Docket Nos. C-2015-2519763 and C-2015-2519770 (Order entered April 6, 2016).

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL W. CHATTIN**

**v.**

**PENNSYLVANIA ELECTRIC COMPANY**

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**Docket No. C-2017-2630649**

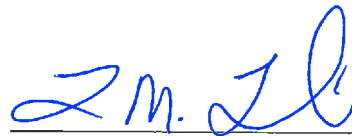
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Michael W. Chattin upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Michael W. Chattin  
58 Rocky Top Lane  
Rome, PA 18837

Dated: November 13, 2017



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Tori L. Giesler  
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